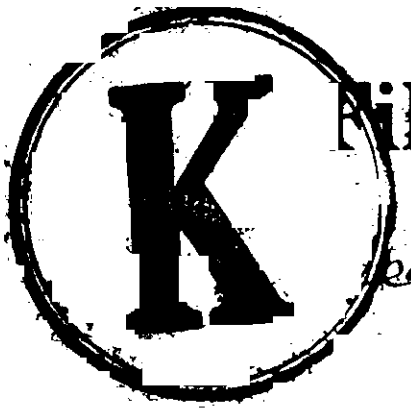
1942



File No. O. Mines/42

DEPARTMENT

BRANCH

Subject:—

Opinions under the

Indian Mines Act, 1923

P 7
E

File No. O. Mines/42.

Stl. Sectt. Slip 24 B e.

2-A

CONTENTS

Legal Department File, O. Mines/42.

Sr. No.	Compilation No.	Subject	Pages
1	2	3	4
1)	R.I. 571/15/1/42. O.N. 539/19/1/42.	The Indian Mines Act, 1923 The B'bay Mining Concession Rules, 1941. Whether Govt. can lawfully impose certain conditions in a mining lease and Whether, if such conditions are incorporated in a separate agreement with Co. in the form of concession the breach of the conditions would entitle Govt. to revoke the mining lease.	1-6

V.V.C.
30/4/56.

SVK-
30/4 PPP 30-4-56

.I.No. 571/15/1/42.

Submitted.

2. On 17th March 1939, under rule 8 of the rules for the grant by Provl.Govts. of prospecting licenses for minerals and of mining leases in British India which were published in G.N. R.D. No. 8658 dated the 23rd Septr.1913, Messrs. Aluminium Production Co. of India, Ltd. of Calcutta was given a certificate of approval as applicants for a license to prospect for minerals in the Province of Bombay. On 24-4-40, the Collr. of Belgaum was instructed to grant to the said Co. a license under Rule 22 of the above quoted Rules to prospect for bauxite in Bilgaum Dist. with the following special conditions:-

(a) At least 50 per cent. of the directors of the Co. should be Indians.

(b) Provided that the Co. can interest sufficient Indian capital, they should extend the participation of such capital to substantially 50 per cent. of their share capital.

The Co. has now applied for a mining lease under Rules 31 of the Bombay Mining Concession Rules, 1941. It is now proposed by Govt. to grant a mining lease to the Co. to extract and remove bauxite from certain areas in Belgaum Dist. subject to the following main conditions:-

(a) At least 50 per cent. of the directors of the Co. should be Indians.

(b) At least 50 per cent. of each grade of employment under the Co. should be filled by Indian nationals within 7 years from the date of execution of the execution of the lease

(c) The Co. should invite capital by public flotation and offer at least 50 per -cent. shares to the public at par as soon as possible but not later than 3 years from the date of execution of the lease .

(d) At least one of the factories of the Co. should be located in the Province of Bombay.

(e) The lease will be granted for not more than 30 years so as to enable Govt. to reconsider the matter after that period in the light of thee circumstances then prevailing . The 30 years' lease applied for by the Co. is for too long a period. In any case the lease will be renewable on revised conditions.

(f) The rate of surface rent will be Re. 1 per acre per annum.

(g) The rate of dead rent will be 8 annas per acre per annum. This rent will cease to be paid as soon as royalty at least equivalent to it in amount is payble

(h) The rate of ~~dead rent~~ royalty will be 8½ per cent. of h the sale value, at the pit's mouth, of bauxite collected or removed during one year.

In this conection, Secy -- M.D. states that his impression is that a lease may contain such conditions as are germane to the purposes of the Act under which it is given in this case the Mines Act and that conditions (a) to (d) seem extraneous . He further states that if Govt. can get the Co., to agree , it would be best to incorporate these terms in a separate agreement in the form of correspondence. However such conditions are frequently imposed in Sind. The papers are referred to the M.L.A. for his advice on the followin points:-

V.V.K.
28/4/56.

(i) whether Govt. can lawfully impose conditions (a) to (d) in a mining lease ,

(ii) whether, if such conditions are incorporated in a separate agreement with the Co. in the form of correspondence, the breach of theconditions would entitle Govt. to revoke the mining lease.

3. The Indian Mines Act, 1923 contains law relating to theregulation and inspection of mines, The object of this measure is for the regulation of work in and inspection of mines in India (See S.O.R. at p.3. of the Mines Manual). The Bombay Mining Concessions Rules , 1941 for regulating the grant of licenses to prospect for minerals and the grant of Mining leases are not made under the Indian Mines Act, 1923, but ~~these Rules~~ are non-statutory Rules (Please see R.L.A.'s No. 9730 dated 6-11-40). The right of the Crown to mines and mineral products is reserved under Sec.69 of the Bombay Land Revenue Code. It is true that when a lease or license is granted under any Act subject to conditions no conditions which are foreign to the scope and object of the Act could be incorporated in such lease or license. (Please see notes under clause (d) (i) at p-30 of Gangadharish's Electrical Law and Practice in India 1st Edn.) In this case the lease is not to be granted under any Act and the above principle would not apply. The lease is to be granted under Rule 41 of the Bombay Mining Concessions Rules, 1940. Under Rule 47 every agreement in respect of a mining lease shall be in Form E appended to the

Rules with such modifications as may be specially ordered by Govt. Govt. can therefore impose any conditions they like. (Please see clause 18 in Part VII of Form F which relates to thepercentage of the staff employe by the lessees being British subjects.) Govt. can therefore lawfully impose conditions (a) to (d) in the mining lease. ~~The second question therefore does not survive.~~

S.R.P. 16/1

The terms and Conditions agreed to by correspondence would not Constitute a valid agreement and any breach of such terms and Conditions would not entitle Govt. to revoke a license issued previously to such agreement.

Sd/-R.P.P. 16/1

Solr.

There is nothing in the conditions proposed to ~~be~~ imposed by the Govt. That would be inconsistent with any of the provisions of the mining Act. or Mining Rules . It is open to Govt. to grant a mining lease on such terms & conditions as it may desire to impose so long as they are not illegal or repugnant to the provisions of any act. It would,not, however be adverable to have such important terms recorded merely in correpondence.

If it is intended that the breach o. of these terms should empower the Govt. to termineats the base they should be empodeed in the lease itself and the lease should expressly be made léable to termenation for breach of any of them.

Sd/-
17/1

D.S.

Sd/- B.N.S.
17-1-42.

Reply may be as under:-
P.N.M.
19/1 R.L.A.

It is true that when a lease or license is granted under any Act. no conditions which are foreign to the scope and object of the Act could properly be incorporated in such lease or license, In *the present case, however, this principle will* have no application as the lease is to be granted, not under the provisions of any Act, but under the Bombay Mining Concessions Rules, 1941 , which are non-statutory . There is nothing in the conditions proposed to be imposed by the Gove nment that would be inconsistent with any of the p rvisions of the Mining Act or Mining Rules. It is open to Government to grant a mining lease on such terms and conditions as it may desire to impose so long as they are not. illegal or repugnant to the provisions of any Act. It would not, however be advisable to have such important terms recorded merely in corresp pondence. If it is intended that the breach of any these terms should empower the Government to

terminate the lease they should be embodied in the lease itself and the lease should ~~be subject to~~ expressly be made ilable to termination for breach of any of them.

Sd/- P.N.P.
19/1

U.R. to R.D. No. 539 , dt. 19/1/42.

V.VK.
~~30-4-~~ 42

Sve 30/4 DPP 30-4-42